

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Case No. 21-cr-250 (JRT/TNL)

Plaintiff,

v.

**ARRAIGNMENT NOTICE
&
ORDER**

Jing Chen (1),
Ying Chen (2).
Li Yang (3), and
Xinhua Xiong (4),

Defendants.

This matter comes before the Court on motions for extension of time filed by Defendants Ying Chen, Li Yang, and Xinhua Xiong. ECF Nos. 111, 115, 113. Defendants Ying Chen, Li Yang, and Xinhua Xiong have also each filed a statement of facts in support of their respective motions. ECF Nos. 112, 116, 114. This matter was previously designated complex under 18 U.S.C. § 3161(h)(7)(B)(iv). ECF No. 104.

Defendants Ying Chen, Li Yang, and Xinhua Xiong seek a 60-day extension of the deadline for filing pretrial motions based on, among other things, the time needed to secure a coordinating discovery expert; prepare a “joint motion, which is already over 40 pages long”; review the volume of discovery disclosed by the Government; and, in the case of Defendant Xinhua Xiong, review such discovery with the assistance of a Chinese Mandarin dialect interpreter. ECF Nos. 111 at 1, 115 at 1-2, 113 at 1. No objections have been filed.¹

¹ To the extent Defendant Ying Chen’s motion can be read as indicating opposition by Defendant Jing Chen to the requested extension, the Court notes that no objection was received from Defendant Jing Chen.

Additionally, beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.² On June 1, 2022, Chief Judge Tunheim entered General Order No. 36, which allows limited in-person proceedings for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 36 (D. Minn. June 1, 2022). General Order No. 36 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 36 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant's consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.³ General Order No. 36 further provides that the presiding judge will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19. **Accordingly, should a defendant**

² All General Orders related to the COVID-19 pandemic may be found on the Court's website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

³ *See also* General Order No. 35, which went into effect on March 21, 2022, vacated General Order No. 33, and extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act "[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota." *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 35 (D. Minn. March 21, 2022).

file pretrial motions, counsel shall also file a letter indicating whether that defendant consents to a motions hearing by videoconference. *See also, e.g.*, ECF No. 44.

Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting a continuance outweigh the best interests of the public and Defendants in a speedy trial and such continuance is necessary to provide Defendants and their counsel reasonable time necessary for effective preparation and to make efficient use of the parties' resources.

The Court will grant an extension of 60 days. Because "[e]xclusions of time attributable to one defendant apply to all codefendants," *United States v. Mallett*, 751 F.3d 907, 911 (8th Cir. 2014) (quotation omitted); *see also United States v. Arrellano-Garcia*, 471 F.3d 897, 900 (8th Cir. 2006), this period of time will be excludable as to all Defendants, including Jing Chen.

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Ying Chen's 4th Motion for Extension of Time to File Pretrial Motions, ECF No. 111, is **GRANTED**.

2. Li Yang's Fourth Motion for Extension of Time to File Pretrial Motions and to Exclude Time Under the Speedy Trial Act, ECF No. 115, is **GRANTED**.

3. Xinhua Xiong's Fourth Motion for Continuance and Exclude Time Under Speedy Trial Act, ECF No. 113, is **GRANTED**.

4. The period of time from **June 2 through September 12, 2022**, shall be excluded from Speedy Trial Act computations in this case. *See Mallett*, 751 F.3d at 911; *Arrellano-Garcia*, 471 F.3d at 900.

5. All motions in the above-entitled case shall be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **August 5, 2022**. D. Minn. LR 12.1(c)(1). Two courtesy copies of all motions and responses shall be delivered directly to the chambers of Magistrate Judge Leung.

6. **Should a defendant file pretrial motions, counsel shall also file a letter on or before August 5, 2022, indicating whether that defendant consents to a motions hearing by videoconference.** *See, e.g.*, ECF No. 44.

7. Counsel shall electronically file a letter on or before **August 5, 2022**, if no motions will be filed and there is no need for hearing.

8. All responses to motions shall be filed by **August 19, 2022**. D. Minn. LR 12.1(c)(2).

9. Any Notice of Intent to Call Witnesses shall be filed by **August 19, 2022**. D. Minn. LR. 12.1(c)(3)(A).

10. Any Responsive Notice of Intent to Call Witnesses shall be filed by **August 24, 2022**. D. Minn. LR 12.1(c)(3)(B).

11. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The government makes timely disclosures and a defendant pleads particularized matters for which an evidentiary hearing is necessary;
or
- b. Oral argument is requested by either party in its motion, objection or response pleadings.

12. If required, the motions hearing shall take place before the undersigned on September 12, 2022, at 10:00 a.m., in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota. D. Minn. LR 12.1(d).

13. Jing Chen's arraignment, ECF No. 110 at 5, is likewise continued and shall take place before the undersigned on September 12, 2022, at 10:00 a.m., in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

14. TRIAL:

a. IF NO PRETRIAL MOTIONS ARE FILED BY A DEFENDANT, the following trial and trial-related dates are:

All voir dire questions and jury instructions must be submitted to Chief District Judge John R. Tunheim on or before **October 31, 2022**.

This case must commence trial on **November 14, 2022**, at **9:00 a.m.** before Chief District Judge Tunheim in **Courtroom 14E**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota.

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b. **IF PRETRIAL MOTIONS ARE FILED**, the trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for Chief District Judge Tunheim to confirm the new trial date.

Dated: June 17, 2022

s/ Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
District of Minnesota

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